Supreme Court, U. S.
FILED
JUN 9 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-1759

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT and INTERNATIONAL SPEEDWAY CORPORATION,

Appellants,

v.

VOLUSIA COUNTY, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

JURISDICTIONAL STATEMENT

NATHAN LEWIN
JAMIE S. GORELICK
MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W.
Suite 500
Washington, D.C. 20037

THOMAS J. COBB
COBB, COLE, SIGERSON, McCOY & BELL
P.O. Box 91
Daytona Beach,
Florida 32015

Attorneys for Daytona Beach Racing and Recreational Facilities District

S. LARUE WILLIAMS
KINSEY, VINCENT, PYLE & WILLIAMS
42 South Peninsula Drive
Daytona Beach, Florida 32018

Attorneys for International Speedway Corporation

Washington, D.C. • THIEL PRESS • (202) 638-4521

Page

TABLE OF CONTENTS

OPINIONS BELOW 2
JURISDICTION 2
STATUTES INVOLVED 2
QUESTIONS PRESENTED 4
STATEMENT 4
THE QUESTIONS ARE SUBSTANTIAL 9
CONCLUSION 14

APPENDIX A – Opinion of Supreme Court of Florida (Nov. 4, 1976). 1a
APPENDIX B – Denial of Petition for Rehearing, Supreme Court of Florida (Feb. 9, 1977) 10a
APPENDIX C – Notice of Appeal to Supreme Court of the United States, filed in Circuit Court for Volusia County, Florida (May 6, 1977). 11a
APPENDIX D – Notice of Appeal to Supreme Court of the United States, filed in Supreme Court of Florida (May 5, 1977) 13a
APPENDIX E – Order extending time to docket appeal, Supreme Court of the United States (May 9, 1977). 15a
APPENDIX F – Opinion of Circuit Court for Volusia County, Florida (October 17, 1975). 16a
APPENDIX G – Opinion of the United States District Court, Middle District of Florida (November 7, 1974). 20a
APPENDIX H – Opinion of Circuit Court for Volusia County (April 28, 1977). 22a

TABLE OF AUTHORITIES

Cases:

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975) 12

Cases, continued: Page

Daytona Beach Racing & Recreational Facilities District v. County of Volusia, No. 74-267-Orl-Civ-Y 6

Daytona Beach Racing & Recreational Facilities District v. County of Volusia, 512 F.2d 1404 (5th Cir. 1975) 7

Daytona Beach Racing & Recreational Facilities District v. County of Volusia, No. 77-99-Orl-Civ-4 8

Home Building & Loan Ass'n v. Blaisdell, 290 U.S. 398 (1934) 10

Mills v. Alabama, 384 U.S. 214 (1966) 13

New Jersey v. Wilson, 7 Cranch 164 (1812) 10

North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc., 414 U.S. 156 (1973) 13

Straughn v. Camp, 293 So.2d 689 (Fla. 1974) 8

United States Trust Co. v. New Jersey, 97 S.Ct. 1505 (1977) . . . . . *passim*

Statutes and Rules:

28 U.S.C. §1257(2) 2, 12

28 U.S.C. §1341 6

Laws of Florida (1953) Chapters 29588, 29590 5

Laws of Florida (1955) Chapter 31343, Section 13 . . . . *passim*

Laws of Florida (1973) Chapter 73-647. . . . . *passim*

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No.

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT and INTERNATIONAL SPEEDWAY CORPORATION,

Appellants,

v.

VOLUSIA COUNTY, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

JURISDICTIONAL STATEMENT

The Daytona Beach Racing and Recreational Facilities District and the International Speedway Corporation appeal from an opinion and judgment of the Supreme Court of Florida rejecting the appellants' challenge under the Contract Clause of the United States Constitution to the State's 1973 repeal of a permanent tax exemption given to the District by 1955 legislation designed to encourage the construction of an automobile racing facility.

OPINIONS BELOW

The opinion of the Supreme Court of Florida (Appendix A, pp. 1a-9a, *infra*), is reported at 341 So.2d 498 (Fla. 1977). The opinion of the Circuit Court of Florida, Seventh Judicial Circuit, dated October 17, 1975 (Appendix F, pp. 16a-19a, *infra*) is not reported.

JURISDICTION

The opinion of the Supreme Court of Florida (Appendix A, pp. 1a-9a, *infra*) was issued on November 4, 1976. A timely petition for rehearing was filed. Rehearing was denied (by a vote of 4-to-2) on February 9, 1977 (Appendix B, p. 10a, *infra*). Notices of appeal to this Court (Appendices C and D, pp. 11a-14a, *infra*) were filed on May 6, 1977. On May 9, 1977, Mr. Justice Powell entered an order extending the time for docketing this appeal to and including June 9, 1977 (Appendix E, p. 15a, *infra*). The jurisdiction of this Court rests upon 28 U.S.C. §1257(2).

STATUTES INVOLVED

Section 13 of Chapter 31343 of the Laws of Florida (1955), provides:

> Exemption from Taxation. — As the economic welfare of the inhabitants of the District is dependent to a substantial degree on tourist business brought to the District because of the recreational facilities and opportunities afforded therein, and as the acquisition or construction of racing and recreational facilities hereunder will promote the economic, commercial and residential development of the District, and as the exercise of the powers conferred by this Act to effect such purposes constitutes the performance of essential public functions, and as the racing and recreational facilities will constitute public property used for public purposes, no taxes or assessments shall be levied upon any such racing and recreational facilities or upon the income therefrom and any bonds issued under the provisions of this Act, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation within the state.

Chapter 73-647 of the Laws of Florida (1973) provides:

> WHEREAS, facilities of the Daytona Beach racing and recreational facilities district have been exempt from taxation and assessment, and
>
> WHEREAS, the ever-increasing cost of government in Volusia County requires that additional funds be derived from taxation of property in the county, and
>
> WHEREAS, the removal of such exemption will result in certain facilities in Volusia County providing their pro rata share of the cost of government, and
>
> WHEREAS, the legislation intends that any facilities of said district be taxed in the same manner as any other property in Volusia County, NOW THEREFORE
>
> *Be It Enacted by the Legislature of the State of Florida:*
>
> Section 1. Section 13 of chapter 31343, Laws of Florida, 1955, is hereby repealed.
>
> Section 2. This act shall take effect January 1, 1974.

QUESTIONS PRESENTED

1. Whether the Florida Legislature has violated the Contract Clause of the United States Constitution by its 1973 repeal of a permanent tax exemption, granted by the Legislature in 1955 to encourage construction of a speedway facility in Daytona Beach, after the facility was built in reliance on the exemption, at an investment of several million dollars.

2. Whether the Supreme Court of Florida should be required to reconsider its November 1976 decision on the federal constitutional claim in light of this Court's April 27, 1977 decision in *United States Trust Co. v. New Jersey*, 97 S. Ct. 1505 (1977).

STATEMENT

In 1902, automobile racing competition began on the ocean beach at Daytona Beach, Florida.[1] Over the following three decades, the name of the city became synonymous with high speed automotive performance. Interest shifted from land speed trials to stock car racing on the World Famous Beach road race course. But as development of the beachfront area grew, encroaching upon that course, it became obvious that if racing in Daytona Beach was to continue – with the promise of increased tourism – automobile racing would have to be conducted at some location other than the beach. Municipal and county authorities recognized in the early 1950's that it was necessary to construct a modern automobile racing facility at Daytona Beach, and special legislation seeking to

[1] These facts are alleged in the appellants' complaint and have not been seriously disputed.

achieve this objective was enacted by the Florida Legislature. In 1953, the Legislature created the Daytona Beach Racing and Recreational Facilities Authority which was given certain enumerated powers. Chapters 29588, 29590, *Laws of Florida* (1953).

Together with county and city officials, members of the Authority conducted preliminary investigations and feasibility studies. They determined that construction of the project would cost almost $3 million, and they recommended that bonds be issued to finance such construction. In June 1955, the Florida Legislature substituted for the more limited powers conferred by the 1953 Act, a new law (Chapter 31343) which created the Daytona Beach Racing and Recreational Facilities District (one of the appellants in this case), and gave it broad authority to issue revenue bonds and enter into contracts and leases in order to construct the needed facility.

Included in the 1955 statute was Section 13 thereof (pp. 2-3, *supra*), titled "Exemption from Taxation," which declared that "[a]s the economic welfare of the inhabitants of the District is dependent to a substantial degree on tourist business brought to the District because of the recreational facilities and opportunities afforded therein and as the acquisition or construction of racing and recreational facilities hereunder will promote the economic, commercial and residential development of the District . . . no taxes or assessments shall be levied upon any such racing and recreational facilities or upon the income therefrom. . . ."

In December 1955, the District leased land from the City of Daytona Beach for the construction of the proposed speedway. It also authorized the issuance of $2.9 million in revenue bonds. The District was,

however, unable to sell the bonds. Therefore, it was forced to look for private financing. International Speedway Corporation – also an appellant – undertook to construct the facility at its own expense on land subleased from the District. A contract providing for such construction "within five years" was signed in November 1957. Between January 1958 and February 1959, the speedway was constructed at a cost exceeding $2 million. In addition, International Speedway Corporation has expended approximately $1.6 million on capital improvements since the opening of the facility.

In May 1973, the Florida Legislature, citing the "ever-increasing cost of government in Volusia County," specifically repealed the permanent tax exemption granted by Section 13 of the 1955 law. See p. 3, *supra*. The County Tax Assessor thereupon fixed the value of the leasehold interest at almost $6.8 million, which would result in an annual *ad valorem* tax of approximately $140,000.

The appellants challenged the validity of this repeal in federal and state courts. Their claim that the repeal violated the Contract Clause of Article I, Section 10 of the United States Constitution was made in a separate action instituted on September 10, 1974 in the United States District Court for the Middle District of Florida. *Daytona Beach Racing & Recreational Facilities District v. County of Volusia*, No. 74-267-Orl-Civ-Y. On November 7, 1974, the federal case was dismissed by the trial judge on the ground that the Tax Injunction Act, 28 U.S.C. §1341, barred federal suit. The Order explaining the ground for dismissal appears as Appendix G, pp. 20a-21a, *infra*, to this Jurisdictional Statement. The Court of Appeals for the Fifth Circuit summarily affirmed the dismissal without hearing oral argument.

Daytona Beach Racing & Recreational Facilities District v. County of Volusia, 512 F.2d 1404 (5th Cir. 1975).

An independent action challenging the repeal on grounds of Florida law had also been instituted in the Circuit Court for Volusia County on September 13, 1974. After dismissal of the federal constitutional claim by the United States District Judge, that claim was added, "under protest," as "Count II" of the complaint in State court. Paragraph 38 of the amended State complaint read:

> The Plaintiff Speedway would not have undertaken the construction and financing it did in 1958 if it had not been insured, by the provision of the law and by the indemnification agreement of Plaintiff District, that its interest in the real property would not be subject to taxes. The sudden imposition of such taxes on Speedway's interest substantially diminishes the value of its contract right and impairs the effectuation by both District and Speedway of the public purpose sought by the 1955 Act.

The appellants filed a motion for summary judgment based on Count 1, which asserted State claims, and the appellees replied with cross-motions for summary judgment. On October 17, 1975, the Circuit Judge granted summary judgment in favor of the appellants on the ground that the Florida Legislature had not repealed the "public purpose declaration" in the 1955 Act, and that so long as the property was being used for a "public purpose" it could not be subject to an *ad valorem* tax even upon the Legislature's directive. See Appendix F, pp. 16a-19a, *infra*. In his opinion, the Circuit Judge stated (p. 18a, *infra*):

> This Court does not deem it necessary to rule on the question of the impairment of contract argument to reach its decision.

On appeal, the Florida Supreme Court reversed by a 4-to-2 vote, with an opinion which appeared to decide in its concluding paragraph (without the benefit of any oral or written argument on the subject by most of the parties to the case) the "question of the impairment of contract argument" which the trial court had not reached. Citing no federal ruling and only one Florida case (*Straughn v. Camp*, 293 So.2d 689 (Fla. 1974)) the majority of the Florida Court held that "a subsequent legislature has the unquestioned authority to repeal prior tax exemption statutes" (p. 8a, *infra*). A timely petition for rehearing objected to the court's precipitous determination of this substantial constitutional question. The petition for rehearing was denied by a 4-to-2 vote (p. 10a, *infra*).

On remand of the case from the Supreme Court of Florida, the Circuit Judge indicated that he viewed the concluding paragraph of the opinion of the Supreme Court of Florida as a final disposition of the federal constitutional claim (Transcript of April 6, 1977, p. 16):[2]

THE COURT:

> Well, on page 7 of their opinion they deal directly with that question, and I don't believe it can be considered as obiter dictum. It couldn't be any more direct than starting with the — two-thirds up the way of the page where they say in the trial court, and going on down to the bottom of the page, and it spells it out pretty

[2]Presently pending again in federal court is another action brought by the appellants on the Contract Clause claim *after* the decision of the Florida Supreme Court. *Daytona Beach Racing & Recreational Facilities District v. County of Volusia*, No. 77-99-ORL-CIV-4. Motions to dismiss based on the Tax Injunction Act have again been filed and are pending.

> clear to me that they ruled on that question. And they, in effect, have precluded any further consideration by this Court of that, and they precluded you from litigating that question in this Court. And, of course, they then reversed it with instructions to have further proceedings consistent with their opinion. So I don't believe that I have any discretion left in the matter in that regard.

And, on April 28, 1977, on the basis of this understanding, the Circuit Judge entered an order granting the appellees' motion for partial summary judgment (Appendix H, 22a-23a, *infra*). The order said, in pertinent part (p. 23a, *infra*):

> The defendants' motion for summary judgment is granted as to the plaintiffs' claims that the leasehold interest of International Speedway Corporation, is exempt, immune, or otherwise not subject and liable to ad valorem taxation for the year 1974, and with respect to said issues, partial summary judgment is hereby entered in favor of defendants.

THE QUESTIONS ARE SUBSTANTIAL

1. This is a classic instance in which a State promised permanent tax exemption, through a formally enacted statute, in order to encourage enormous capital investment for a project that would serve a substantial public purpose. After the money was expended in reliance on the State's promise, the State pulled the rug out from under the investor by blithely repudiating its earlier promise. The sorry justification given by the legislature for this obviously inequitable conduct — which would never be tolerated on the part of a prviate contracting party — is that there has been "ever-increasing cost of government in Volusia County"

which "requires that additional funds be derived from taxation of property in the county" (p. 3, *supra*). And the only reason stated by the Supreme Court of Florida in support of its approval of such high-handed conduct is that the legislature had "unquestioned authority to repeal prior tax exemption statutes."

Such legislative authority is by no means "unquestioned," as might have been demonstrated to the Supreme Court of Florida had it provided the appellants with an opportunity to brief and argue this constitutional issue. This Court recently observed in *United States Trust Co. v. New Jersey*, 97 S. Ct. 1505 (1977), that the consistent line of judicial authority is precisely to the contrary (97 S. Ct. at 1518-19 n. 21; citation omitted):

> In *New Jersey v. Wilson*, 7 Cranch 164 (1812), the Court held that a State could properly grant a permanent tax exemption and that the Contract Clause prohibited any impairment of such an agreement. This holding has never been repudiated, although tax exemption contracts generally have not received a sympathetic construction.

Most of the considerations which this Court found persuasive in support of the Contract Clause challenge in the *United States Trust Co.* case apply to this case as well. Here, as in *United States Trust Co.*, the limitation upon the State relates not to its police power or power of eminent domain, but merely to the area of "financial obligations," the taxing and spending power. Thus, the state's obligation here does not fall within the reserved powers of a state that cannot be contracted away. 97 S. Ct. at 1519.

Nor does this case involve any "emergency" situation of the kind presented by *Home Building & Loan Ass'n*

v. Blaisdell, 290 U.S. 398 (1934), which was thoroughly discussed and distinguished in the *United States Trust Co.* opinion. 97 S. Ct. at 1514, 1518. Rather, this case involves a straightforward "destruction of contract" such as the Court in *Blaisdell* stated would be barred by the Contract Clause. 290 U.S. at 439. In this case, the state justified its action by the desire for additional funds. As this Court observed in *United States Trust Co.*, however, the fact that a state might prefer to have higher revenues and lower expenditures does not justify an impairment of contract (97 S. Ct. at 1520):

> A governmental entity can always find a use for extra money. . . . If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all.

And finally, this is not a situation in which the State's actions result in only minor modification or insignificant impairment of the obligation that had previously been undertaken. In this case, the original promise – tax exemption – is "totally destroyed," and the 1973 repeal subjects the appellants' property to the same tax liability that applies to property developed without a promise of tax exemption.

What makes this case most compelling, however, is the fact that the State's contractual promise – directed specifically to this project – was a major incentive for the initial construction of the speedway. This is not, in other words, a situation in which an ongoing business concern or an entire industry secures permanently favorable treatment from a single session of a legislature in which it is particularly influential. In such a case, there are sound reasons of policy not to prevent later legislatures from re-examining an extraordinary tax

benefit which one legislative session may have conferred. But when the necessary price of obtaining a unique facility that public officials have determined serves a public purpose is to promise permanent tax exemption, it is a particularly flagrant violation of the principles underlying the Contract Clause to permit a later legislature to keep the public benefits of the facility while repudiating the promise that initially gave it life.[3]

2. Although the Supreme Court of Florida remanded the case for further proceedings, its concluding paragraph has been read by the trial court as an authoritative disposition on the Contract Clause issue. See pp. 8-9, *supra,* and Appendix H, pp. 22a-23a, *infra.* Consequently, so far as the federal constitutional claim is concerned, the Florida courts are treating it as having been decided, finally and irreversibly – except, of course, by this Court – by the Supreme Court of Florida's decision of November 1976.

On this basis, it is clear that the opinion of the Supreme Court of Florida meets the "final judgment or decree" standard of 28 U.S.C. §1257(2). See *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 476-487

---

[3]The Supreme Court of Florida apparently misunderstood the "contractual right" argument, believing that the appellants were basing their claim on a contract with the City of Daytona Beach. It then asserted that the city was "without authority to bind the legislature" (p. 8a, *infra*). We do not, of course, argue that the City "bound" the Legislature. We maintain that the Legislature bound *itself*, within the meaning of the Contract Clause, when it enacted Section 13 of the 1955 law, and that the Legislature was not constitutionally permitted to impair *its own contract* by repudiating it with the 1973 repealer. Therefore, most of the discussion in the concluding paragraph of the court's opinion – indeed, all of it apart from the quotation from *Straughn v. Camp* – is without relevance to appellants' attack on the statute.

(1975); *North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc.*, 414 U.S. 156, 159-164 (1973); *Mills v. Alabama*, 384 U.S. 214, 217-218 (1966).

3. The important constitutional issue is, we believe, presented squarely enough by the present state of the record that it can be resolved if this case is now set for plenary briefing and argument. We recognize, however, that the considerations spelled out by this Court's opinion in *United States Trust Co. v. New Jersey*, 97 S. Ct. 1505 (1977), were not before the Supreme Court of Florida when it considered this appeal and when it issued the opinion of which we are now seeking review.

In light of this Court's intervening decision – which the dissenters in *United States Trust Co.* believed to be a "revival of the Contract Clause" – this Court might deem it appropriate to vacate the decision of the Supreme Court of Florida and remand the case for reconsideration in light of *United States Trust Co. v. New Jersey.*

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted and this case set for oral argument. Alternatively, the judgment below should be vacated and the case remanded for reconsideration in light of the intervening *United States Trust Co.* decision.

Respectfully submitted,

NATHAN LEWIN
JAMIE S. GORELICK
MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W.
Suite 500
Washington, D.C. 20037

S. LARUE WILLIAMS
KINSEY, VINCENT, PYLE & WILLIAMS
42 South Peninsula Drive
Daytona Beach,
Florida 32018

Attorneys for International Speedway Corporation

THOMAS J. COBB
COBB, COLE, SIGERSON, McCOY & BELL
P.O. Box 191
Daytona Beach,
Florida 32015

Attorney for Daytona Beach Racing and Recreational Facilities District

APPENDIX

APPENDIX A

IN THE SUPREME COURT OF FLORIDA
JULY TERM, 1976

CASE NO. 49,115

Circuit Court
Case No. 74-2861-01 Div.

VOLUSIA COUNTY, a political subdivision of the State of Florida; JAMES BAILEY, as Tax Assessor of Volusia County, Florida, ROBERT D. SUMMERS, as Tax Collector and Administrator of the Division of Revenue of Volusia County, Florida; and J. EDWARD STRAUGHN, Executive Director, Department of Revenue, State of Florida,

Appellants,

v.

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT, a body politic and corporate under the laws of the State of Florida, and INTERNATIONAL SPEEDWAY CORPORATION, a Florida corporation,

Appellees.

Opinion filed November 4, 1976

An Appeal from the Circuit Court in and for Volusia County, E. L. Eastmoore, Judge

William M. Barr of Raymond, Wilson, Conway, Barr and Burrows, for Volusia County; and Robert L. Shevin,

Attorney General; and David M. Hudson, Assistant Attorney General, for J. Edward Straughn, Appellants Thomas T. Cobb of Cobb, Cole, Sigerson, McCoy, Bell and Bond, for Daytona Beach Racing and Recreational Facilities District; and S. LaRue Williams of Kinsey, Vincent, Pyle and Williams, for International Speedway Corporation, Appellees

HATCHETT, J.

This is the latest in a long series of lawsuits marking the history of the Daytona International Speedway, and beginning even before the racetrack was built. In 1955, by special act,[1] the legislature created appellee Daytona Beach Racing and Recreational Facilities District (the District). The District leased 374 acres of land from the City of Daytona Beach and subsequently acquired an

[1]Chapter 31343, Laws of Florida 1955 (repealing Chapter 29590, Laws of Florida 1953). Section 13 of this special act provides:

> Exemption from Taxation. – As the economic welfare of the inhabitants of the District is dependent to a substantial degree on tourist business brought to the District because of the recreational facilities and opportunities afforded therein, and as the acquisition or construction of racing and recreational facilities hereunder will promote the economic, commercial and residential development of the District, and as the exercise of the powers conferred by this Act to effect such purposes constitutes the performance of essential public functions, and as the racing and recreational facilities will constitute public property used for public purposes, no taxes or assessments shall be levied upon any such racing and recreational facilities or upon the income therefrom and any bonds issued under the provisions of this Act, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation within the state.

additional 74 acres in fee simple. The original plan was to finance construction of a racetrack on this land by means of revenue bonds. The circuit court entered a decree validating the proposed bonds and this Court affirmed the decree on appeal, 89 So.2d 34 (Fla. 1956), but the bonds were never issued. Instead the District leased all 448 acres to appellee International Speedway Corporation (the Corporation), which undertook to construct a racetrack facility at its own expense, as the principal consideration for the leasehold.

In 1960 and 1961, the Volusia County Tax Assessor assessed the city-owned portion of the land, which was leased by the Corporation from the District, as nonexempt realty. The Corporation, the District, and the City of Daytona Beach sued to enjoin collection of this tax. The trial court's dismissal of their complaint was affirmed by the District Court of Appeal, First District, *Daytona Beach Racing & Rec. Fac. Dist. v. Paul*, 157 So.2d 156 (Fla. 1st DCA 1963), but this Court quashed that decision in an opinion reported at 179 So.2d 349 (1965). On remand, the plaintiffs prevailed and the judgment of the trial court was affirmed. *Paul v. Daytona Beach Racing & Rec. Fac. Dist.*, 208 So.2d 653 (Fla. 1st DCA 1968) *cert. den.* 224 So.2d 299 (Fla. 1969).

Before the present litigation began, the City of Daytona Beach conveyed to Volusia County its interest in the land leased to the District. The people of Florida adopted a new Constitution effective January 1, 1969. The legislature enacted the Tax Reform Act,[2] now

[2]Chapter 71-133, Laws of Florida. Section 14 of the Tax Reform Act has not been codified in Florida Statutes. In pertinent part, Chapter 71-133, §14, Laws of Florida, provides:

> All special and local acts or general acts of local application granting specific exemption from property

[footnote continued]

codified for the most part in Chapter 196, Florida Statutes; and thereafter enacted Chapter 73-647, Laws of Florida.[3] In light of these developments, appellant Tax Assessor of Volusia County assessed the Corporation's leasehold as nonexempt property, whereupon the District and the Corporation filed suit against Volusia County, the tax assessor, the tax collector and the executive director of the department of revenue. The trial court entered judgment for the plaintiffs, enjoining the "assessing, levying or attempting to collect ad valorem taxes on the leasehold." Appeal was taken to the District Court of Appeal, First District, and transferred here. Because the trial court "initially and directly pass[ed] on the validity of a state statute [Chapter 73-647, Laws of Florida]," Article V, Section 3(b)(1), we have jurisdiction.

---

taxation are hereby repealed to the extent that such exemption is granted. . . .

[3]Chapter 73-647 provides, as follows:

WHEREAS, facilities of the Daytona Beach racing and recreational facilities district have been exempt from taxation and assessment, and

WHEREAS, the ever-increasing cost of government in Volusia County requires that additional funds be derived from taxation of property in the county, and

WHEREAS, the removal of such exemption will result in certain facilities in Volusia County providing their pro rate share of the cost of government, and

WHEREAS, the legislation intends that any facilities of said district be taxed in the same manner as any other property in Volusia County, NOW THEREFORE

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 13 of chapter 31343, Laws of Florida, 1955, is hereby repealed.

Section 2. This act shall take effect January 1, 1974.

The trial court ruled that Chapter 31343, Laws of Florida 1955, operates to exempt the District's leasehold from ad valorem taxation, notwithstanding the legislature's subsequently expressed intention "that any facilities of said district be taxed in the same manner as any other property in Volusia County." Chapter 73-647, Laws of Florida. Even if this grudging interpretation[4] of the specific repealer could be sustained, the trial court's judgment is incompatible with the general repealer embodied in Chapter 71-133 §14, Laws of Florida. *Straughn v. Camp*, 293 So.2d 689 (Fla. 1974). In light of the repealer statutes and other substantial changes in Florida law since the District's tax exempt status was first litigated, the earlier decisions are not determinative of the present

---

[4]The trial court summed up its reasoning in these words:

> In this case the Legislature saw fit to repeal the specific grant of a tax exemption, but did not repeal the declaration of public purpose. If the Legislature does not repeal the public purpose declaration as set forth in Chapter 31343 and which has been upheld as a valid declaration by the Supreme Court of Florida, there can then be no ad valorem taxation of the leasehold interest of the Plaintiffs' property. Chapter 73-647, Laws of Florida is therefore void insofar as it is used to provide the basis for the assessment and levy of ad valorem taxation of the property owned by Plaintiff, Daytona Beach Racing and Recreational Facilities District, or leased by it to Plaintiff, International Speedway Corporation.

The Court rejected precisely these arguments in *Straughn v. Camp*, 293 So.2d 689 (Fla. 1974), in holding that the leaseholds involved there were not exempt from ad valorem taxation. The dissent protested in vain that "while the Legislature has eliminated the tax exemptions . . . *it did not repeal* . . . [the] *declar[ation] that the development . . . was a public purpose*" and that this Court had previously considered "the validity of this legislative declaration of public purpose and expressly upheld it." At 696 (McCain, J., dissenting).

controversy. *Straughn v. Camp, supra; Wagner v. Baron*, 64 So.2d 267 (Fla. 1953). We are concerned here, moreover, with a leasehold and not with a fee simple interest in real estate.

The Constitution of 1885 provided that property owned by corporations "shall be subject to taxation unless . . . used exclusively for religious, scientific, municipal, educational, literary, or charitable purposes." Article 16, Section 16, Florida Constitution 1885. The phrase "municipal . . . purposes" was broadly interpreted to include any "public" purpose; under the Constitution of 1885, this Court decided that simply holding a proprietary interest in "a community recreational asset and business stimulant," *Daytona Beach Racing & Rec. Fac. Dist. v. Paul*, 179 So.2d 349, 353 (Fla. 1965), like the speedway served a "municipal purpose." *Id.* Perceiving decisions of this kind as creating inequities in the tax structure, the draftsmen of the Constitution of 1968 limited the municipal purpose exemption to "property owned by a municipality and used exclusively by it for municipal or public purposes." Article VII, Section 3(a), Florida Constitution 1968. The present Constitution further provides that where any project financed by revenue bonds "is occupied or operated by any private corporation . . . pursuant to . . . lease . . . the property interest created by such . . . lease shall be subject to taxation to the same extent as other privately owned property." Article VII, Section 10(c), Florida Constitution 1968. Paralleling this constitutional provision, Section 196.001, Florida Statutes (1975) makes "[a]ll leasehold interests in property . . . of the state, or any political subdivision, municipality, agency, authority, or other

public body corporate of the state" subject to taxation unless otherwise exempted.[5]

Other statutory provisions exempt privately held leaseholds of governmental property from taxation "only when the lessee," Section 196.199(2)(a), Florida Statutes (1975), "is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit, or . . . which would otherwise be a valid subject for the allocation of public funds." Section 196.012(5), Florida Statutes (1975). The lessee in the present case does not serve a governmental purpose. The Corporation's operation of the speedway "is purely proprietary and for profit." *Williams v. Jones*, 326 So.2d 425, 433 (Fla. 1975) (reh. den. 1976). The Corporation exists in order to make profits for its stockholders and uses the leasehold to further that purpose. This use is determinative: "It is the utilization of leased property from a governmental source that determines whether it is taxable under the Constitution." *Straughn v. Camp, supra*, at 689.

The burden is on the claimant to show clearly any entitlement to tax exemption. "The rule is that all property is subject to taxation unless expressly exempt and such exemptions are strictly construed against the party claiming them. *State ex rel. Wedgworth Farms, Inc. v. Thompson*, 101 So.2d 381 (Fla. 1958)." *Williams v. Jones, supra*, at 435. Mr. Justice Sundberg, writing for the Court in *Williams v. Jones, supra*, delineated the scope of the exemption at issue here in the following words:

---

[5]Section 196.001, Florida Statutes (1975) supersedes the statutory provisions considered in *Dade County v. Pan American World Airways, Inc.*, 275 So.2d 505 (Fla. 1973).

> The exemptions contemplated under Sections 196.012(5) and 196.199(2)(a), Florida Statutes, relate to "governmental-governmental" functions as opposed to "governmental-proprietary" functions. With the exemption being so interpreted all property used by private persons and commercial enterprises is subjected to taxation either *directly* or *indirectly* through taxation on the leasehold. Thus all privately used property bears a tax burden in some manner and this is what the Constitution mandates. At 433.

Operating an automobile racetrack for profit is not even arguably the performance of a "governmental-governmental" function.

In the trial court, appellees also maintained that their leasehold enjoyed tax exempt status as a matter of contractual right. This position does not square with the rule that "a subsequent legislature has the unquestioned authority to repeal prior tax exemption statutes." *Straughn v. Camp, supra*, at 694. But appellees do not even claim that the legislature entered into a contract, only that the City of Daytona Beach agreed to

> levy no tax upon the improvements constructed by the [District] or upon the leasehold estate . . . created [by the lease between the City and the District], so long as the same is held by . . . [a] public body.

The City of Daytona Beach is without authority to bind the legislature, and the lease between the City and the District evinces no attempt to exercise such authority *ultra vires*. The leasehold adverted to in appellees' complaint, moreover, was created by the lease between the City of Daytona Beach as lessor and the District as lessee. On the other hand, the leasehold

which has been assessed as nonexempt was created by the lease between the District as lessor and the Corporation as lessee. Finally, a privately held corporation organized and operated for its stockholders' profits is not a "public body" within the meaning of the agreement between the City and the District.

The judgment is reversed and the cause is remanded for further proceedings consistent with this opinion.

OVERTON, C. J., BOYD and ENGLAND, JJ., Concur

ROBERTS and ADKINS, JJ., Dissent

APPENDIX B

IN THE SUPREME COURT OF FLORIDA
WEDNESDAY, FEBRUARY 9, 1977

CASE NO. 49,115

VOLUSIA COUNTY, ETC., ET AL.,

Appellants,

vs.

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT, ETC., ET AL.,

Appellees.

On consideration of the Petition for Rehearing filed by appellees and Reply thereto, it is ordered that said petition is denied.

OVERTON, C. J., BOYD, ENGLAND, AND HATCHETT, JJ., CONCUR

ADKINS, J., AND ROBERTS, RET. J., DISSENT

APPENDIX C

IN THE CIRCUIT COURT FOR
VOLUSIA COUNTY, FLORIDA

CASE NO. 74-2861-01
Division B

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT, a body politic and corporate under the laws of the State of Florida, and INTERNATIONAL SPEEDWAY CORPORATION, a Florida corporation,

Plaintiffs,

vs.

VOLUSIA COUNTY, a political subdivision of the State of Florida; JAMES BAILEY, as Tax Assessor of Volusia County, Florida, ROBERT D. SUMMERS, as Tax Collector and Administrator of the Division of Revenue of Volusia County, Florida; and J. EDWARD STRAUGHN, Executive Director, Department of Revenue, State of Florida,

Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Daytona Beach Racing and Recreational Facilities District and International Speedway Corporation, Plaintiffs in the above-captioned case, hereby appeal to the Supreme Court of the United

States from the judgment of the Supreme Court of the State of Florida, issued pursuant to the denial of Plaintiffs' Petition for Rehearing entered on February 7, 1977.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

COBB, COLE, SIGERSON, McCoy,
BELL, BOND, MONACO & KANEY
Post Office Box 191
Daytona Beach, Florida 32018
Telephone: (904) 255-8171
Attorneys for Plaintiffs,
Daytona Beach Racing and
Recreational Facilities District

Nathan Lewin and
Jamie S. Gorelick of
MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W., Suite 500
Washington, D.C. 20037
Telephone: (202) 293-6400

and

KINSEY, VINCENT, PYLE & WILLIAMS
42 South Peninsula Drive
Daytona Beach, Florida 32108
Telephone: (904) 252-1561
Attorneys for Plaintiffs,
International Speedway Corporation

By /s/
Thomas T. Cobb

Dated: May 5, 1977 [Filed May 6, 1977]

[Certificate of Service Omitted in Printing]

APPENDIX D

IN THE SUPREME COURT OF FLORIDA

CASE NO. 49,115

Circuit Court
Case No. 74-2861-01
Division B

VOLUSIA COUNTY, a political subdivision of the State of Florida; JAMES BAILEY, as Tax Assessor of Volusia County, Florida, ROBERT D. SUMMERS, as Tax Collector and Administrator of the Division of Revenue of Volusia County, Florida; and J. EDWARD STRAUGHN, Executive Director, Department of Revenue, State of Florida,

Appellants,

v.

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT, a body politic and corporate under the laws of the State of Florida, and INTERNATIONAL SPEEDWAY CORPORATION, a Florida corporation,

Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Daytona Beach Racing and Recreational Facilities District and International

Speedway Corporation, Appellees in the above-captioned case, hereby appeal to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Florida, issued pursuant to the denial of Appellees' Petition for Rehearing entered on February 7, 1977.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

COBB, COLE, SIGERSON, McCOY,
BELL, BOND, MONACO & KANEY
Post Office Box 191
Daytona Beach, Florida 32018
Telephone: (904) 255-8171
Attorneys for Plaintiffs,
Daytona Beach Racing and
Recreational Facilities District

By /s/ Thomas T. Cobb
Thomas T. Cobb

Nathan Lewin and
Jamie S. Gorelick of
MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W., Suite 500
Washington, D.C. 20037
Telephone: (202) 293-6400

and

KINSEY, VINCENT, PYLE & WILLIAMS
42 South Peninsula Drive
Daytona Beach, Florida 32018
Telephone: (904) 252-1561
Attorneys for Appellee,
International Speedway Corporation

By /s/ S. LaRue Williams
S. LaRue Williams

Dated: May 5, 1977

[Certificate of Service Omitted in Printing]

APPENDIX E

SUPREME COURT OF THE UNITED STATES

No. A-915

DAYTONA BEACH RACING AND
RECREATIONAL FACILITIES
DISTRICT, ETC., ET AL.,

Appellants,

v.

VOLUSIA COUNTY, ETC., ET AL.

ORDER

UPON CONSIDERATION of the application of counsel for the appellants,

IT IS ORDERED that the time for docketing an appeal in the above-entitled cause be, and the same is hereby, extended to and including June 9, 1977.

/s/ Lewis F. Powell

Associate Justice of the Supreme
Court of the United States

Dated this 9th day of May, 1977

APPENDIX F

IN THE CIRCUIT COURT OF FLORIDA,
SEVENTH JUDICIAL CIRCUIT, IN AND
FOR VOLUSIA COUNTY

CASE NO. 74-2861-01 B

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT, a body politic and corporate under the laws of the State of Florida, and INTERNATIONAL SPEEDWAY CORPORATION, a Florida corporation,

Plaintiff,

vs.

VOLUSIA COUNTY, a political subdivision of the State of Florida; ROBERT BOLIN, as Tax Assessor of Volusia County, Florida; ROBERT D. SUMMERS, as Tax Collector and Administrator of the Division of Revenue of Volusia County, Florida; and J. EDWARD STRAUGHN, Executive Director, Department of Revenue, State of Florida,

Defendants.

SUMMARY FINAL JUDGMENT

THIS CAUSE was considered by the Court upon motions by all parties for Summary Judgment, everyone agreeing that there are no facts in dispute.

Briefly stated, the history of the "Speedway", insofar as it is pertinent to this litigation is: In 1953 the Legislature adopted Chapters 29590 and 29583, Laws of Florida, and created the Daytona Beach Racing and Recreational District. In 1955 the Legislature adopted Chapter 31343, Laws of Florida, which declared, *inter alia*, in Section 13 thereof, "... the exercise of the powers conferred by this Act to effect such purposes constitutes the performance of essential public functions, ..." That same section granted a specific exemption from taxes and assessments. In addition, Section 17 of Chapter 31343 declared "... the exercises of such powers or any of them, constitute and are proper public purposes and are for the welfare and benefit of the District and its inhabitants."

In the case of *Daytona Beach Racing and Recreational Facilities District v. Paul*, 179 So.2d 349 (1965) the Florida Supreme Court upheld the question of the legislative determination of public purpose and the legislative grant of the tax exemption.

In 1973 the Legislature, by the passage of Chapter 73-647, repealed Section 13 of Chapter 31343, as quoted above, and which Defendants maintain took away the tax exemption previously granted.

Plaintiff's brought this action and seek to declare Chapter 73-647, Laws of Florida, unconstitutional as a law impairing the obligation of contract. Plaintiffs further seek to enjoin the Defendants from levying and collecting any taxes.

Defendants contend that the legislative repeal of the tax exemption is effective and that the leasehold interest of the Plaintiffs is subject to ad valorem taxes.

In 1968 the Constitution of Florida was revised and in Article VII, Section 3(a) provides:

(a) All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation . . .

Subsequent thereto, the Legislature adopted several statutes of a general nature, among which is found Section 196.199(2), Florida Statutes, which provides that leasehold interests created in property of the United States, the state or any of its political subdivisions, or any municipality, agency, authority, or other public body corporate of the state, shall be exempt from ad valorem taxation only when the lessee serves or performs a governmental, municipal or public purpose or function.

This Court does not deem it necessary to rule on the question of the impairment of contract argument to reach its decision.

In this case the Legislature saw fit to repeal the specific grant of a tax exemption, but did not repeal the declaration of public purpose. If the Legislature does not repeal the public purpose declaration as set forth in Chapter 31343 and which has been upheld as a valid declaration by the Supreme Court of Florida, there can then be no ad valorem taxation of the leasehold interest of the Plaintiffs' property. Chapter 73-647, Laws of Florida is therefore void insofar as it is used to provide the basis for the assessment and levy of ad valorem taxation of the property owned by Plaintiff, Daytona Beach Racing and Recreational Facilities District, or leased by it to Plaintiff, International Speedway Corporation.

It is not for the Courts to usurp the legislative right to establish what is or is not a subject of public purpose. That matter must be resolved in the Legislature. Until that declaration of public purpose is

repealed expressly, however, no taxes can be levied or collected against these Plaintiffs.

Accordingly, it is

ORDERED AND ADJUDGED that Plaintiffs' Motion for Summary Judgment is granted, and the Defendants and each of them are permanently enjoined and restrained from assessing, levying or attempting to collect ad valorem taxes on the leasehold properties which are the subject of this litigation.

DONE AND ORDERED in Chambers, Courthouse, Palatka, Putnam County, Florida, this 17th day of October 1975.

/s/ E. L. Eastmoore
CIRCUIT JUDGE

APPENDIX G

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO. 74-267-Orl-Civ-Y

DAYTONA BEACH RACING AND
RECREATIONAL FACILITIES DISTRICT,
et al.,

Plaintiffs,

vs.

COUNTY OF VOLUSIA, et al.,

Defendants.

ORDER

This cause came on before the Court for a hearing on the motion of all the defendants, County of Volusia, Robert Bolin, Robert D. Summers, and J. Ed Straughn, to dismiss the complaint. The undisputed facts are that the plaintiffs seek to challenge in this court on federal constitutional claims the action of the Legislature of Florida in terminating a previously enacted tax exemption granted to the plaintiffs.[1]

---

[1]Section 13 of Florida Statutes, Chapter 31343, enacted in 1955 provided that no taxes or assessments were to be levied upon any of the racing and recreational facilities that were constructed pursuant to the Act. In 1973, Fla. Statutes Chapter 31-647 was enacted which repealed Section 13 of Chapter 31343, Laws of Florida, 1955, thus eliminating plaintiffs' tax exempt status.

The plaintiffs have also filed in the State Courts of Florida a challenge to the same statute eliminating their tax exemption based upon alleged state grounds. The defendants contend that Section 1341, Title 28 United States Code, precludes this Court from considering this case and that plaintiffs must look to the State Courts for relief, including the federal constitutional grounds raised by them.

In view of *Great Lakes Dredge & Dock Company v. C. C. Huffman*, 319 U.S. 293, 87 L. Ed. 1407 (1943) and *Bland v. McHann*, 463 F.2d 21 (5th Cir., 1972), the position of the defendants appears to have merit in that this Court finds that the plaintiffs have a "plain, speedy, and efficient remedy" in the state courts.[2] 28 United States Code §1341.

The plaintiffs presented the ingenuous argument that, based on cases not involving state taxes, this court should retain jurisdiction of this case so as to permit the plaintiffs to litigate in the state courts only their state claims and then, if unsuccessful, to pursue for the first time their federal claims in this court.

While such a procedure has been authorized for non-state tax issues, it is not the procedure specifically approved in state tax matters. It is, therefore

ORDERED that the motion to dismiss be and is hereby granted and this case is dismissed.

DONE AND ORDERED in Chambers at Orlando, Florida, this 7th day of November, 1974.

/s/ George C. Young
CHIEF JUDGE

---

[2]FSA §194.171, the predecessor to which the Fifth Circuit has found satisfied the requirements of 28 U.S.C. §1341. *Carson v. City of Ft. Lauderdale*, 293 F.2d 337 (5th Cir., 1961).

APPENDIX H

IN THE CIRCUIT COURT, IN AND
FOR VOLUSIA COUNTY, FLORIDA.

CIVIL ACTION NO. 74-2861-01
DIVISION B

DAYTONA BEACH RACING AND
RECREATIONAL FACILITIES
DISTRICT, et al.,

Plaintiffs,

vs.

COUNTY OF VOLUSIA, et al.,

Defendants.

ORDER DENYING PLAINTIFFS' MOTION FOR STAY AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN PART

This action came on for hearing on the motion of plaintiff, INTERNATIONAL SPEEDWAY CORPORATION, for a stay, and on defendants' motion for summary judgment in their favor. Upon consideration of the record of this cause and the arguments of counsel, it is

ORDERED as follows:

1. The motion of plaintiff, INTERNATIONAL SPEEDWAY CORPORATION, for a stay of this action, is denied.

2. The defendants' motion for summary judgment is granted as to the plaintiffs' claims that the leasehold interest of International Speedway Corporation, is exempt, immune, or otherwise not subject and liable to ad valorem taxation for the year 1974, and with respect to said issues, partial summary judgment is hereby entered in favor of defendants.

3. The Court finds that plaintiffs' amended complaint states a claim disputing and objecting to the manner and amount of the assessment of the plaintiff's leasehold for 1974, and that there is a genuine issue of material fact as to that issue. Accordingly, with respect to the issue of the manner and amount of the assessment of the leasehold of the plaintiff, INTERNATIONAL SPEEDWAY CORPORATION, for the year 1974, defendants' motion for summary judgment is denied.

DONE and ORDERED in Palatka, Florida, this 28th day of April, 1977.

/s/ E. L. Eastmoore
CIRCUIT JUDGE